

THIS PRESENTATION 'IS UP-TO-DATE ON 18-08-2020; PRACTITIONERS ARE ADVISED THAT AT THE CURRENT RATE OF LEGAL UPDATES BY THE GOVERNMENT, THE STANDARDS FORMULATED IN THIS DOCUMENT MAY HAVE CHANGED'.

Legal Impacts of COVID-19 on the Practice of Occupational Medical Practitioners

Dr JNR Lapere

COVID-19 has acutely raised government's and employers' need for occupational health knowledge, standards and services.

OMPs report pressure to have their clinical skill serve a social role and/or incompatible expectations within their simultaneous obligations to patients and third parties.

This occurs amidst fast-changing medical knowledge and recommendations, as well as (equally) fast changing legislation.

The legislative framework in the state of Disaster has allowed the promulgation of highly impacting labour legislation, linked to health- or business standards, which defines new occupational health duties for employers and employees; in many instances, new employment policies are needed, and existing ones require review.

Whilst the standard of Disaster legislation may leave to be desired, SA's basic (existing) health- and labour- laws, together with the ethical standards should assist in addressing the challenges posed by the 'new' normal.

The epidemic requires concerted ethical reasoning in the light of potential assaults on core ethical values and standards, such as those relating to the community, human rights, autonomy, confidentiality, compassion and respect.

OMP's are required to decisively deal with legal- and ethical conundra ; e.g. vulnerable employees, work-acquired COVID-19, reporting to statutory bodies, case management in the workplace, working from home, remuneration for absence, safe job placement, reporting illness and confidentiality, return to work after illness.

COVID-19 DOH official figures 13 August 2020

27 360 reported cases of coronavirus among health care workers

14 143 nurses

11 545 other health workers

1 644 doctors

240 healthcare workers have died as a result of COVID-19

Employment Regulation @ COVID-19 pandemic

1. **Common law:** duties of employer and of employee
2. **Contract of employment**
3. **Statutes**
 1. Occupational Health and Safety Act & Regulations for HBA- class 4 HBA
 2. Mine Health and Safety Act
 3. Basic Conditions of Employment Act: sick pay
 4. Labour Relations Act: employment conditions, ill health incapacity, (?) retrenchment
 5. Employment Equity Act: medical testing
 6. Unemployment Insurance Act: unemployment-, sick-pay
 7. Compensation for Occupational Injuries and Diseases Act: Occupational disease

SARS-CoV-2 & COVID-19

Laws to deal with a Pandemic

- I. SARS-CoV-2 declared Category 1 **Notifiable Disease**
- II. **National Health Act** and Regulations relating to notifiable conditions
- III. SARS-CoV-2, a medical emergency requiring urgent and drastic **Disaster measures = Disaster Management Act, 2002 and Regulations**
- IV. **Directions:** DEL, DMR, RSR, Compensation for Workplace-acquired COVID-19,..
- V. **Health Guidelines** incorporated in Disaster Directives

SARS-CoV-2, a novel respiratory pathogen

NICD Communicable Diseases Communiqué February 2020, Vol. 19 (2)

1. COVID-19 is classified as a **Category 1 notifiable medical condition** under 'Respiratory disease caused by a novel respiratory pathogen'.
2. Therefore, notification should be made **immediately** on identification of:
 1. A case meeting case definition
 2. A cluster of cases with severe respiratory illness with evidence of common exposure or epidemiologic link
 3. On receipt of a laboratory diagnosis of the novel respiratory pathogen

Regulations relating to surveillance and control of notifiable conditions

National Health Act 61 of 2003 : Regulations relating to the surveillance and the control of notifiable conditions (GG 41330 of 15 December 2017)

1. Implementation principles
2. Responsibilities
 - @ Health establishment
 - @ Health care provider-level

Regulations relating to surveillance and control of notifiable conditions

Responsibilities at health establishment level

1. The health establishment manager must implement Regulations
2. The health establishment manager must ensure that
 1. Regulations are adhered to in the establishment
 2. WHO Standard notifiable case definitions are used
 3. National department forms and tools for reporting notifiable medical conditions are used
 4. Adherence to notification procedures
 5. National COVID-19 guidelines on surveillance and control are adhered to and implemented

**Occupational health clinic
= health establishment**

- 1. Manager responsible for implementation?**
- 2. Standard case definitions, SOP, forms, reporting tools?**
- 3. Notification procedures?**
- 4. Risk-based surveillance?**
- 5. COVID-19 risk containment? Refusal of OMP to deliver service without special HCW PPE supplied by employer as *'the OMP has to have it in any case for own personal use and at own expense'*?**
- 6. Compliance monitoring?**
- 7. NA S 56(6) arrangements? How to apply Nursing Act S 56(6) in allowing nursing practitioners at the OH service to engage in clinical assessments: e.g. identification of suspect cases at work, evacuation of suspect cases at work, identification of close social contacts and institution of self-quarantine, assessment of RTW employees etc?**

Regulations relating to surveillance and control of notifiable conditions

Responsibilities of health care providers

A health care provider must

1. Notify focal person of any diagnosed COVID-19 case
2. Ensure adherence to Regulations
3. Adhere to DOH guidelines on surveillance and control of notifiable medical conditions

Regulations relating to surveillance and control of notifiable conditions

Healthcare Provider COVID-19 notification procedures

1. Upon diagnosis of suspected case, report immediately (telephone)
2. Immediate report followed by written or electronic notification within 24 h
3. If patient dies as a result of COVID-19: report death by most rapid means available, followed by written or electronic notification within 24 h
4. In case of outbreak or an unusual incidence: report by most rapid means available, followed by written or electronic notification within 24 h
5. Report data elements as per Annexure B

Regulations relating to surveillance and control of notifiable conditions

Prevention and control of notifiable medical conditions

The disease -specific guidelines on how to diagnose, manage and prevent the spread of notifiable medical conditions issued by the national department must be followed in implementing the appropriate medical examination, prophylaxis, counselling, treatment, isolation or quarantine measures

DOH: Clinical management of suspected or confirmed COVID-19 disease Version 4 (18th May 2020)

A suspected COVID-19 case includes any person presenting with an acute (≤ 14 d) respiratory tract infection or other clinical illness compatible with COVID-19 or an asymptomatic person who is a close contact to a confirmed case ('although asymptomatic close contacts are classified as suspected cases, they should not routinely be tested')

- 1. NICD 'suspected COVID-19 case' (especially ARTI): not tested and RTW with sick certificate ('URTI, Flu')? How to deal with sick certificates 'influenza, but not COVID', where the employee was not PCR tested?**
- 2. Employer pressure on PCR testing of asymptomatic close contacts?**
- 3. Employer pressure on PCR testing of SARS-CoV2-naive employees? Should the OMP oblige where employers demand asymptomatic employees to be tested? Or COVID-healed employees to be tested prior to RTW? Or contractor-employees to be tested prior to being allowed access on site?**

Regulations relating to surveillance and control of notifiable conditions

Voluntary medical examination

A **suspected** case, a **carrier** or **contact** of COVID-19 must subject:

1. Clinical examination
2. Taking of biological specimens
3. To infection control: prophylaxis, treatment, isolation or quarantine
4. Provide all information required

Regulations relating to surveillance and control of notifiable conditions

Mandatory medical examination

Application to the High Court for persons who refuses to consent

(‘Reg 15(3) The health care provider should with the assistance of law enforcement agencies, subject a person who is a clinical or laboratory confirmed case, carrier or contact of a notifiable medical condition to prophylaxis, treatment or implement isolation or quarantine procedures whilst awaiting the court order in order to prevent transmission???)

SARS-CoV-2: 'urgent and drastic measures' against 'the medical emergency'

State of Emergency

1. Courts and Parliament retain supervisory role
2. Extension beyond 21 days must be approved by Parliament
3. Must be necessary to restore peace and order
4. Unlikely first step to address a medical emergency

State of Disaster

1. The Cabinet is primary responsible
2. National Disaster Management Centre within Dept COGTA recommends and makes legislation
3. Powers and duties under COGTA Minister
4. State of disaster lasts for 3 months + monthly extension possible
5. CC can set aside the declaration

SARS-CoV-2- Disaster Management Act Declarations

<https://www.gov.za/coronavirus/guidelines>

- [Disaster Management Act: Declaration of a National State of Disaster: COVID-19 \(coronavirus\): Extension, 15 Aug 2020](#)
- [Disaster Management Act: Declaration of a National State of Disaster: COVID-19 \(coronavirus\): Amendment, 31 Jul 2020](#)
- [Disaster Management Act: Declaration of a National State of Disaster: COVID-19 \(coronavirus\): Extension, 13 Jul 2020](#)
- [Disaster Management Act: Declaration of a National State of Disaster: COVID-19 \(coronavirus\): Extension, 5 Jun 2020](#)
- [Disaster Management Act: Declaration of a National State of Disaster: COVID-19 \(coronavirus\), 15 Mar 2020](#)
- [Disaster Management Act: Classification of a national disaster: COVID-19 \(coronavirus\) , 15 Mar 2020](#)

SARS-CoV-2- Disaster Management Act

Core lock-down Regulations

- [Alert level 2 lockdown regulations, 17 Aug 2020](#)
- [Alert level 3 lockdown regulations](#), as amended on 12 Jul 2020
- [Alert level 4 lockdown regulations](#), 29 Apr 2020
- [Lockdown regulations](#), as amended on 20 Apr 2020
- [Lockdown regulations amendment](#), 20 Apr 2020
- [Lockdown regulations amendment](#), 16 Apr 2020

Disaster Management Act, 2002 Regulations ito S 27(2)

of 18 March 2020 (GG 43107) by Minister of Cooperative Governance and Traditional Affairs

Additional authority to The Minister of Health to issue COVID-19 directions in any area of the republic, for

1. Sourcing, recruitment, training, deployment of human resources
2. Provision of health equipment, sanitation materials and medical supplies
3. Mortuaries and disposal of COVID-19 mortal remains

Disaster Management Act, 2002 Regulations ito S 27(2)

Additional authority to any Cabinet Minister

Any Cabinet member may issue and vary directions, as required, within mandate, to address, prevent and combat the spread of COVID -19, and its impact on matters relevant to their portfolio, from time to time.

SARS-CoV-2- Disaster Management Act

Other lock-down Regulations

1. [Amended ICT regulations](#), 5 May 2020
2. [Expansion of scope of banking sector exemption regulations](#), 5 May 2020
3. [Healthcare sector exemptions expansion](#), 8 Apr 2020
4. [ICT regulations](#), 6 Apr 2020
5. [Excessing pricing complaint referrals regulations](#), 3 Apr 2020
6. [Lockdown regulations amendment](#), 2 Apr 2020
7. [Public Finance Management Act: Exemption](#), 31 Mar 2020
8. [Municipal Finance Management Act: Exemption for municipalities](#), 30 Mar 2020
9. [Hotel industry exemption](#), 27 Mar 2020
10. [Export control regulations](#), 27 Mar 2020
11. [Lockdown regulations amendments](#), 26 Mar 2020
12. [Retail property exemption regulations](#), 24 Mar 2020
13. [Banking sector exemption regulations](#), 23 Mar 2020
14. [Price increase protection regulations and directions](#), 19 Mar 2020
15. [Healthcare sector exemptions](#), 19 Mar 2020
16. [Disaster management regulations](#), 18 Mar 2020
17. [Regulations on restrictions on the movement of air travel](#), 18 Mar 2020
18. [Ports regulations](#), 18 Mar 2020

SARS-CoV-2- Disaster Management Act Guidelines and Notices with occupational impact

- [Guidelines for Mandatory Code of Practice on Mitigation and Management of Coronavirus COVID-19 Outbreak](#), 18 May 2020
- [Compensation for occupationally acquired Novel Coronavirus](#), 24 Mar 2020
- [UIF guidelines](#), 20 Mar 2020

SARS-CoV-2- Disaster Management Act

Directions with occupational impact

- [COVID-19 temporary employee/employer relief scheme](#), 13 Aug 2020
- [Health directions](#), 7 Aug 2020
- [Air services directions](#), 24 Jul 2020
- [Compensation for workplace acquired novel Coronavirus COVID-19 disease directive](#), 23 Jul 2020
- [Directions of extension validity license PDPr and registration of motor vehicles](#), 22 Jul 2020
- [Directions on public transport services](#), 22 Jul 2020
- [Consolidated Direction on Occupational H&S Measures in Certain Workplaces](#), 4 Jun 2020
- [Directions resumption of construction and related services in education institutions](#), 1 Jun 2020
- [Railway operations directions](#), 30 May 2020

Regulations relating to surveillance and control of notifiable conditions

Mandatory medical examination BEFORE COVID-19

Conditions must be fulfilled before mandatory prophylaxis, treatment, isolation or quarantine may be taken:

1. The person must have expressly, impliedly or by conduct refused voluntary measures to protect public health
2. Consent in terms of section 7 of the Act could not be obtained
3. The person who is a case, carrier or contact of a notifiable medical condition has been offered and encouraged to accept counselling services in order to assist to understand the nature of the voluntary measures, the personal health risk, the public health risk and the procedure that will be followed should he or she refuse voluntary measures

~~NHA Regulations~~ **OVERRULED**

Disaster Management Act, 2002 SARS-CoV-2-Regulations ito S 27(2)

of 18 March 2020 (GG 43107) by Minister of Cooperative Governance and Traditional Affairs

Refusal of medical examination, prophylaxis, treatment, isolation and quarantine

- A suspected or confirmed (clinical or lab) COVID-19 case
- A person who has been in contact with a person who is a carrier of COVID-19

May NOT refuse consent to an enforcement officer, for

1. Submission to medical examination
2. Taking any bodily sample by a person authorised in law to do so
3. Admission to a health establishment or a quarantine- or isolation- site
4. Submission to mandatory prophylaxis, treatment, isolation or quarantine or isolation in order to prevent transmission

~~NHA Regulations~~ **OVERRULED**

Disaster Management Act, 2002 SARS-CoV-2-Regulations ito S 27(2)
of 18 March 2020 (GG 43107) by Minister of Cooperative Governance and Traditional Affairs

Refusal of medical examination, prophylaxis, treatment, isolation and quarantine

If a person does not comply with the instruction or order of the enforcement officer:

1. That person must be placed in isolation or quarantine for a period of 48 hours
2. Pending a warrant being issued by a magistrate

~~NHA Regulations~~ **OVERRULED**

Disaster Management Act, 2002 Regulations ito S 27(2)

of 18 March 2020 (GG 43107) by Minister of Cooperative Governance and Traditional Affairs

Refusal of medical examination, prophylaxis, treatment, isolation and quarantine

No person is entitled to compensation for any loss or damage arising out of any bona fide action or omission by an enforcement officer under this regulation.

SARS-CoV-2 Regulations relating to the surveillance and the control of notifiable conditions

Control of spread of notifiable medical conditions

Reporting

Any

- Head of institution (training, education, care- or residential-, correctional etc.)
- Member of community (health workers, local leaders, traditional or religious leaders)

Must report a case, carrier or a person who was in contact with a carrier or case

- 1. NICD 'suspected COVID-19 case' (especially ARTI): not tested and not reported)?**
- 2. How to deal with employees refusing to go for testing?**
- 3. Reporting by HCW of carrier, case, contact?**

Where an OMP identifies that an employee has breached the employer's COVID-19 rules (e.g. did not report a confirmed COVID case in the household), should the OMP communicate this to the employer?

SARS-CoV-2 NHA and Regulations

Confidentiality

Regulations notifiable conditions

1. Information is confidential
2. No person may disclose this information unless
 - No consent clause**
 - 2. A court order or any law requires that disclosure
 - 3. The disclosure is for the purposes of public health surveillance, investigations and interventions

National Health Act Section 14

1. All information is confidential
2. No person may disclose this information unless
 1. The user consents
 2. A court order or any law requires that disclosure
 3. Non-disclosure of the information represents a serious threat to public health

SARS-CoV-2 NHA and Regulations

Protection of Health Records

Regulations notifiable conditions

Health records of a COVID-19 case, contact or carrier must be protected as provided for in section 17 (1) of the Act

National Health Act Section 17(1)

The person in charge of a health establishment in possession of a user's health records to prevent unauthorised access to those records and to the storage facility or system

SARS-CoV-2 Regulations relating to the surveillance and the control of notifiable conditions

Offences and penalties

Any person who

1. Fails to comply with a provision of these Regulations
2. Has a duty to notify and fails to notify COVID-19

Is guilty of an offence and is on conviction liable to a term of imprisonment not exceeding 10 years, or imprisonment and such fine as determined by a court of law.

Disaster Management Act, 2002 Regulations ito S 27(2)

of 18 March 2020 (GG 43107) by Minister of Cooperative Governance and Traditional Affairs

Offences and penalties (additional)

1. Any person who intentionally **misrepresents** that he, she or any other person is infected with COVID-19 is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding six months
2. Any person who **publishes any statement**, through any medium, including social media, with the intention to deceive any other person about (a) COVID-19, (b) COVID-19 infection status of any person or (c) any measure taken by the Government to address COVID-19, commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding six months
3. Any person who **intentionally exposes** another person to COVID-19 may be prosecuted for an offence, including **assault, attempted murder or murder**

SARS-CoV-2- Disaster Management Act Rail Directions

Measures to address, prevent and combat the spread of COVID -19 in the railway operations GG 43159 of 26 March 2020

8(5) **Fitness for duty** assessments for safety critical staff to include medical screening for COVID -19

10 **Reporting** to the Railway Safety Regulator and the relevant authorities

1. Operators must provide regular reports to the Regulator regarding suspected and confirmed cases of COVID -19 infections together with implemented measures for each reported case within their railway operations
2. Operators must immediately report suspected cases of COVID -19 within their railway operations to the NICD and the Regulator for information

SARS-CoV-2- Disaster Management Act Rail Directions

Measures to address, prevent and combat the spread of COVID -19 in the railway operations GG 43159 of 26 March 2020

- These reports must be submitted to the RSR on a weekly basis, on Mondays before 11:00 to the email: covid19reporting@rsr.org.za and should indicate cumulative statistics.

SARS-CoV-2- Disaster Management Act DMR Directions

Guidelines for a mandatory code of practice on the mitigation and management of COVID-19 outbreak GG 43335 of 18 May 2020

This Guideline must be read in conjunction

1. Regulations to Disaster Management Act
2. Directions issued by the Minister of Mineral Resources and Energy
3. Guiding Principles of Management of COVID-19 in SAMI
4. Guidelines developed by the World Health Organization, National Department of Health, and **National Department of Employment and Labour**

Guidelines for a mandatory code of practice for COVID-19 outbreak GG 43335 of 18 May 2020

Preliminary requirements (before arrival of employees at mine's premises):

1. Employer to communicate new procedures for **medical surveillance (??)** before they leave areas of residence during and after the lockdown
2. Inform employees of duty to report should they test positive for COVID-19 during the nationwide lockdown, long weekend or leave **???**
3. The employee is obliged to provide COVID-19 test results to the employer where available, and with a letter from the relevant health facility stating the date of onset of symptoms, diagnosis, date of specimen collection of positive tests if applicable, and expected date when isolation ends **??**
4. The employer is obliged to provide COVID-19 test results to the employee
5. The mine must be informed through the designated healthcare worker if an employee has pre-existing condition that will cause an employee to be unfit to return to work or classified as **vulnerable employee** (*'as far as possible with employee consent and respecting medical confidentiality'*) **??**

Guidelines for a mandatory code of practice for COVID-19 outbreak GG 43335 of 18 May 2020

Screening and testing for COVID-19 upon return to the Mine

1. Employee returning to work (start or increased capacity) subject to fitness to work assessment
2. Employees with pre-existing conditions must be identified and only be permitted to work after being **declared fit by an OMP**
3. Employer **must be informed** through designated healthcare worker if employees have pre-existing conditions (*'as far as possible with employees' consent and respecting medical confidentiality'*)
4. Risk-based method to prioritise high-risk individuals for more active interventions such as prophylaxis and individualised counselling
5. Scheduling of dates for flu vaccination should be made when vaccines are available and employees with pre-existing conditions must be prioritised

Guidelines for a mandatory code of practice for COVID-19 outbreak GG 43335 of 18 May 2020

General employer requirements

1. Provide adequate, usable, and appropriate training and information material
2. Dedicated EAP support service or collaboration with the Public Service
3. The employer must develop a process where an employee will be able to disclose any pre-existing conditions prior to returning to work
4. Review mines' emergency response plans in consideration of COVID19

Guidelines for a mandatory code of practice for COVID-19 outbreak GG 43335 of 18 May 2020

Mine must plan for employees who have signs/symptoms of COVID-19

1. Dedicated 24-hour hotline to mine's dedicated healthcare workers assigned for COVID-19
2. Procedure for employee to report COVID-19 suspicion
3. How, where, duration of isolation for employees suspected of being infected with COVID-19
4. The site where suspected COVID-19 employees will be screened, diagnosed and treated
5. Process for admission to a health care facility and associated transport arrangements
6. The requirements of self-isolation
 1. Self-isolate under guidance of a healthcare worker
 2. Employees must be provided with the necessary PPE
 3. The medical centre team/healthcare worker must follow-up
 4. A register of employees referred for isolation must be kept, as well as list of contacts

Guidelines for a mandatory code of practice for COVID-19 outbreak GG 43335 of 18 May 2020

Mine must plan contact cases

1. Dedicated 24-hour hotline to mine's dedicated healthcare workers assigned for COVID-19
2. Procedure and arrangements for testing the employee
3. Process for admission to a health care facility and associated transport arrangements
4. How, where, duration of isolation or of quarantine

Guidelines for a mandatory code of practice for COVID-19 outbreak GG 43335 of 18 May 2020

Mine must plan for screening and testing for COVID-19

1. Employer to screen all persons entering all mine premises
2. Anyone who fails screening must be denied access and advised to seek medical assistance
3. Employer must put systems in place to refer for further assessment by healthcare worker
4. Employees will be tested only if they meet the PUI criteria

Guidelines for a mandatory code of practice for COVID-19 outbreak GG 43335 of 18 May 2020

Contact tracing duties

The employer must put in place a contact tracing programme for contacts of COVID-19 cases **identified on the mine** and communicate with the DOH on tracing of contacts **beyond the mine ??**

Guidelines for a mandatory code of practice for COVID-19 outbreak GG 43335 of 18 May 2020

Monitoring and reporting by the employer

1. Record and report to NICD
2. Report to 'relevant mine's health and safety structure as per available guidelines (*confidentiality must be adhered to*)??
3. Investigate all confirmed Covid-19 cases at the mine, ito Section 11(5)(a)(ii) and (iii) and report within 24 hours to the Principal Inspector of Mines
4. Consolidate NICD reports into a monthly report to the Principal Inspector of Mines as determined by the DMRE
5. Keep the COVID-19 data at the mine as required by the NDOH and NICD
6. Appoint a COVID-19 Compliance Officer with the necessary powers to provide oversight on the implementation of this guideline

SARS-CoV-2- Disaster Management Act

MHSA Section 11(5)

Monitoring and reporting by the employer: ito Section 11(5)(a)(ii) and (iii)

- (5) The employer must (a) conduct an investigation into every (ii) serious illness and (iii) **health-threatening occurrence** and (aA) commence the investigation within 10 days from the date of serious illness or health threatening occurrence
- (5) The employer must (d) on completion of each investigation, prepare a report that (i) identifies the causes and the underlying causes, (ii) identifies any unsafe conditions, acts, or procedures that contributed and (iii) make recommendations to prevent similar.
- (5) The employer must (e) deliver a copy of the report within 30 days from the date of the *serious illness or health-threatening occurrence* to the *Principal Inspector of Mines*

'Health-threatening occurrence' means any occurrence that has or may have the potential to cause serious illness or damage to health

*'Serious illness' means any illness resulting from **occupational** exposure that affects the health of a person to the extent that it incapacitates the affected person from resuming that person's normal or similar occupation for four days or more*

Guidelines for a mandatory code of practice for COVID-19 outbreak GG 43335 of 18 May 2020

Monitoring and reporting by the employer: comments on 'Investigate all confirmed Covid-19 cases at the mine, ito Section 11(5)(a)(ii) and (iii) and report within 24 hours to the Principal Inspector of Mines'

1. Applied to COVID-19 this means a close (high risk) contact incident at work in which an employee is exposed to a confirmed COVID-19 infective person and, due to this contact at work, develops workplace-acquired COVID-19
2. This incident is also defined in the COIDA Notice and both the MHSA and the COIDA define the employer-duty for reporting, which includes the (confidential) particulars of the employee.

Guidelines for a mandatory code of practice for COVID-19 outbreak GG 43335 of 18 May 2020

Comments on 'consolidate NICD reports into a monthly report to the Principal Inspector of Mines as determined by the DMRE'

1. The duty to report a case to the NICD (<https://www.nicd.ac.za/notification-process/>) vests with ' *Every doctor or nurse (health care provider), laboratory and medical schemes in both the public and private health sector who diagnoses a patient with any one of the NMC must report the case*'. OMP's, not involved in primary case, would not make such diagnosis where employees have their own medical provider (Mine PHC doctor, GP or clinic)
2. There is no duty on an employer to report to NICD
3. There is no duty on employees or their doctors to report or reveal the diagnosis of social COVID -19 to the employer
4. Where employers gather the information on social COVID-19 cases (e.g. through sick certification or personal report to the manager), there is a duty of confidentiality upon the employer (e.g. S 90 of BCEA)
5. It would thus not be possible to report these social COVID-19 cases accurately, nor without express authorisation from the employee to the employer

SARS-CoV-2 Disaster Management Act DEL Consolidated Direction 4 June 2020

Application and special arrangements

1. The identifiable hazard
2. The employer
3. The worker
4. Vulnerable worker

SARS-CoV-2 Disaster Management Act DEL Consolidated Direction 4 June 2020

Employer OH duties

1. SARS-CoV-2 **RA** (as per HBAREg)
2. **Symptom screening** as per DOH *Guidelines for symptom monitoring and management of essential workers for COVID-19 related infection*
3. HBA **medical surveillance** and testing
4. Mitigate COVID-19 risk for **vulnerable employees** in accordance *DOH Guidance on vulnerable employees and workplace accommodation in relation to COVID-19*

SARS-CoV-2 Disaster Management Act

DEL Consolidated Direction 4 June 2020

Employer OH duties

3. If a **worker has been diagnosed with COVID-19** (?), an employer must
 1. Inform the Department of Health
 2. Inform the Department of Employment and Labour
 3. Investigate the mode of exposure including any control failure
 4. Review COVID-19 risk assessment
 5. Deal with fomites as per *DOH Guidance note for workplaces in the event of identification of a COVID -19 positive employee*
 6. Give administrative support to any contact -tracing measures implemented by the Department of Health
 7. Paid sick leave ito S 22 of BCEA, or UIF
 8. If contracted COVID-19, arising out of and in the course of employment, lodge a claim for compensation in terms COIDA

SARS-CoV-2 Disaster Management Act DEL Consolidated Direction 4 June 2020

Employer duties

4. **RTW** of worker diagnosed with COVID -19
 1. Completed the mandatory 10 days isolation
 2. Medical evaluation confirming fitness to work if the worker had moderate or severe illness
 3. Worker is closely monitored on return to work
 4. Worker wears a surgical mask for 21 days from the date of diagnosis

SARS-CoV-2 Disaster Management Act DEL Consolidated Direction 4 June 2020

Employer duties

5. Worker in **contact with COVID -19 case**
 1. Employer to assess exposure (as per *DOH Guidelines for symptom monitoring and management of essential workers for COVID -19 related infection and Clinical management of suspected or confirmed COVID -19 disease*)
 2. Identify exposure probability at work: high or low risk of transmission between the workers
 1. Low risk: continue work + monitor for 14 days from the first contact
 2. High risk: quarantine for 14 days and sick leave rights

SARS-CoV-2 Disaster Management Act DEL Consolidated Direction 4 June 2020

Worker obligations and special right

- 6. Worker compliance:** every worker to comply with measures introduced by employer as required by this Direction
- 7. Refusal to work:** employee may refuse if circumstances arise which pose an imminent and serious risk of exposure to COVID- 19 (with reasonable justification)

SARS-CoV-2 Disaster Management Act

OHSA S 14 General duties of employees

Every employee shall at work-

1. Take reasonable care for the H&S. of himself and other persons affected by his acts or omissions
2. Cooperate with the employer to enable the employer to fulfill its H&S duties
3. Carry out any lawful order given, and obey H&S rules and procedures laid down by his employer
4. Report any situation which is unsafe or unhealthy
5. If involved in any incident, report immediately and not later than the end of the particular shift

SARS-CoV-2 Disaster Management Act

Directive on Compensation for Workplace-acquired COVID-19 of 24 July 2020

1. Directive applies from 23rd July 2020 for as long as COVID-19 is declared national disaster
2. Defines '*workplace-acquired COVID-19*' as '*an instance where an employee contracts COVID-19 whilst carrying out his or her duties*'
3. Any employee, regardless of occupation, is entitled to claim
4. COIDA Directive requirements:
 1. 'Exposure' to a 'known source of COVID-19 at the workplace',
 2. 'Chronological sequence between exposure and development of symptoms'
 3. Section 65 applies, i.e. COVID-19 must have arisen out of and in the course of employment
5. No compensation for unconfirmed cases or cases under investigation (note DEL Consolidated Directive requires employer to pay sick pay for close contact exposures in workplace)

SARS-CoV-2 Disaster Management Act: Health Guidelines

Guideline for symptom monitoring and management of essential workers for COVID -19 related infection

Recommended procedure

1. Employees should report symptoms to designated person and / or occupational health practitioner prior to entry in workplace
2. Employees should be screened for COVID-19 related symptoms prior to entry in workplace
3. Designated person and / or occupational health practitioner to decide on employee's continued attendance at work
4. At start of shift and prior to ending shift: designated persons and / or occupational health practitioner check employees for PUI criteria
5. Temperature measurement if this is available at the worksite
6. Should an employee report symptoms, s/he should immediately be provided with a surgical mask and arrangements for COVID-19 testing at the closest testing centre to be made

SARS-CoV-2 Disaster Management Act: Health Guidelines

Guideline for symptom monitoring and management of essential workers for COVID -19 related infection

Recommended procedure

7. On receiving test results the employee and/or health professional should notify the workplace
8. The employee should be managed according to either scenario 1 or 2 in the algorithm
9. A positive COVID-19 test in an employee will require all potential contacts in workplace to be assessed using scenarios 3 or 4 in the algorithm
10. RTW after isolation or quarantine period:
 1. Medical evaluation to confirm that they are fit to work
 2. Wearing of surgical masks for 21 days from the initial test
11. Scenario 1: worker with positive COVID-19 test
12. Scenario 2: COVID-19 suspected worker
13. Scenario 3: High risk exposure to confirmed case
14. Scenario 4: Low risk exposure or exposure to suspected case

SARS-CoV-2 Disaster Management Act: Health Guidelines

Clinical management of suspected or confirmed COVID-19 disease

Version 4 (18th May 2020)

1. Defining: 'suspected COVID-19 case' - 'close contact'
2. Early identification/triage IS NOT telemedicine!
 1. Patients seeking healthcare services for potential COVID-19 should preferably phone ahead of time to their doctor, clinic, emergency room, or closest testing centre, so that adequate precautions can be taken
 2. Patients should wear masks and be given a surgical mask on arrival Patients who do not self- identify as potentially having COVID-19 should be screened and identified as soon as possible upon arriving at a health facility, to avoid prolonged contact with other patients and healthcare workers.

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3. Testing

1. Asymptomatic close contacts: should not routinely be tested; under certain circumstances (e.g. in care homes) testing of asymptomatic contacts may be indicated. (Further guidance on this topic is expected shortly)
2. A single positive PCR test is sufficient proof of COVID-19 infection; no role for repeat “confirmatory” PCR testing despite the absence of symptoms
3. PCR tests may produce false negative: if a high clinical suspicion for COVID-19 persists despite an initial negative test, repeat testing should be considered in consultation with an infectious diseases expert
4. Currently, antibody-based (serological) tests not recommended for the diagnosis of acute COVID-19
5. Point of Care antigen tests: currently not recommended due to concerns about poor sensitivity and specificity

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Clinical management of suspected or confirmed COVID-19 disease recording and reporting

Prescribed reporting tool	When to use	Comments
Notifiable medical condition case notification (electronic and requires registration)	To be completed for all confirmed COVID-19 cases	No longer required to notify suspected cases, only confirmed cases
Contact line list (electronic and requires registration)	To be completed for all individuals suspected of COVID 19 disease and having a specimen taken	This needs to be completed for all patients from whom COVID- 19 samples are collected
Clinical platform for hospitalised patients (electronic and requires registration)	To be completed for all confirmed inpatients daily (until discharge)	Documents comorbidities, clinical progression, treatment and outcomes
Laboratory specimen submission form (hard copy only)	For all COVID-19 specimens	Include patient's ID/passport number and contact details
Home assessment forms (hard copy only)	To be completed at de-isolation, for all patients being cared for at home	Documents patient progress and outcomes

SARS-CoV-2 Labour Statutes: Employment Equity Act

Can an employer compel an employee to undergo a COVID-19 test? Conditionally, yes

1. National Health Act, Regulations Relating to the Surveillance and the Control of Notifiable Medical Conditions : “a carrier or case of a notifiable medical condition must subject to ...clinical examination and taking of necessary biological specimens”.
2. EEA allows an employer to require medical testing where this is permitted or required by legislation
3. An employer may require employees to undergo medical testing for COVID-19 **if presumed infected or a carrier of COVID-19**
4. An employer may refuse entry to the workplace

SARS-CoV-2 Statutes

The end